

BRIGETTE K. SMITH
Executive Secretary



RONALD AYRES
Board Chair

STATE OF WASHINGTON
BOARD FOR VOLUNTEER FIREFIGHTERS & RESERVE OFFICERS

PO Box 114 • Olympia, WA 98507 • (360) 753-7318 • FAX (360) 586-1987 • Toll Free (877) 753-7318

Website: www.bvff.wa.gov

December 29, 2008

RE: Proposed WAC (Chapter 491-03 WAC)

To all Fire, Police, and EMSD Departments,

In October of 2008, we sent you a copy of a proposed WAC to define the terms "firefighter", "emergency worker", and "reserve officer". It would also define "active" for the purposes of pension participation. We asked that all departments review the proposed WAC and comment on it. Many of you submitted written comments and/or attended one of two hearings that were held. We greatly appreciated your input. This has been a huge learning experience for us and we appreciate all of your help, patience, and support. We learned several things from the hearings, and you will see some of them reflected in this re-draft of our original proposal.

The first is that there is a growing concern regarding administrative personnel. We have heard both sides of the issue – constituents who believe that administrative personnel should have a place in RCW 41.24 and those who believe that, like PERS and LEOFF, they should have a separate system. We believe that everyone agrees that administrative personnel fill essential positions in our departments and need to be supported in some way. At a special meeting on November 4th, 2008, the Board unanimously passed a resolution to begin working with fire and law enforcement organizations to conduct a study regarding how to best provide support for administrative personnel and what legal and financial changes would be required to enable participation of administrative personnel in RCW 41.24 (if that is the recommendation). It is the Board's hope that the joint study could be completed by the end of 2010. Minutes of the meeting and a copy of the resolution can be viewed at www.bvff.wa.gov.

We also heard of a few technical concerns through the hearing process. The first technical concern was that the Board used the terms "shift, duty, on-call, and standby time" without defining them. The second technical concern was that the WAC was written to say that reserve officers had to be commissioned by the Criminal Justice Training Commission (CJTC). The CJTC can only certify, not commission. As a result of these concerns, the Board eliminated the terms "shift, duty, and on-call", and defined "standby". They also changed the language to reflect the fact that reserve officers are certified by the CJTC and commissioned by their municipalities.

Because we made these changes, we have filed a new CR-102 Form with the state and have scheduled an additional hearing. We ask that you review the enclosed documents with their changes and take the opportunity to comment, if you would like. We still have all of the previously received comments on file, so you do not need to resubmit your former comments again. If you would like to comment in writing, we do ask that you do so by February 5th, 2009.

Please share this with your department members, your chiefs & sheriffs, your commissioners, and your city council members, since we are only sending out one copy to each department. Additional copies are available online at our website.

Again, we really appreciate all of your comments. If you have any questions, please call me at 877-753-7318.

Sincerely,

Brigitte K. Smith
Executive Secretary





PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Board for Volunteer Firefighters and Reserve Officers

- ☒ Preproposal Statement of Inquiry was filed as WSR 08-06-068 ; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)**Chapter 491-03 WAC****Membership and Participation Requirements**

1. What duties within a municipality qualify me for participation/membership in the board for volunteer fire fighters' and reserve officers' relief and pension principal fund? -- Clarifies the definitions of "fire fighter", "emergency worker", and "reserve officer"
2. What level of activities do I have to participate in to be eligible for participation/membership in the volunteer fire fighters' and reserve officers' pension? -- Clarifies what level of activities are required to be an "active member"

Hearing location(s):**Thurston Co. FPD #7** at 5046 Boston Harbor Rd. N.E., Olympia, WA 98506.Date: February 19, 2009 Time: 1:00 p.m.**Submit written comments to:**Name: Brigette K. Smith
Address: PO Box 114, Olympia, WA 98507e-mail bridgettes@bvff.wa.gov
fax (360)586-1987 by (date) 1/30/09**Assistance for persons with disabilities:** ContactBrigette K. Smith by February 5, 2009TTY (360) 753-7318 or (877) 753-7318**Date of intended adoption:** February 20, 2009
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal would not change any existing rules, but would clarify what is already required by the State Supreme Court case law. It would provide clear written guidance to fire, police, and emergency medical service district employees regarding who is allowed to participate in the volunteer firefighters' and reserve officers' relief and pension act and to what level they have to participate to be considered "active" for pension purposes.

Reasons supporting proposal: In *Schrom v. Board for Volunteer Fire Fighters*, the State Supreme Court ruled that "a person asserting pension eligibility must, at minimum, 'fight fires' in order to be a 'fire fighter' ... (and) must, at minimum, possess some duties that include fighting fires if a fire were to ever occur". *City of Kennewick v. Bd. For Volunteer Firefighters* 85 Wn. App. 366, 933 P.2d 423 (1997) stated that "it is inconceivable that the Legislature intended to create a fire fighters' pension fund for individuals who, apart from paying an annual fee, engaged in no activity related to fire fighting". In *Campbell v. Bd. For Volunteer Fire Fighters*, 111 Wn. App. 413, 45 P.3d 216 (2002), the court stated that a firefighter could not receive credit for the years following his removal from fire response duties. Furthermore, in *Kennewick*, the court stated that the fire fighter was not eligible for pension participation because he "did not engage in sufficient activities related to fire fighting to be eligible for pension credit". Finally, the State Supreme Court stated that a member must participate in activities such as fire suppression, training to fight fires, and responding to fire alarms.

Statutory authority for adoption: RCW 41.24.290**Statute being implemented:** Chapter 491-03**Is rule necessary because of a:**

Federal Law?

Federal Court Decision?

State Court Decision?

- | | |
|---|-----------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

If yes, CITATION:

Schrom v. Bd for Volunteer Fire Fighters
153 Wn.19 (2004)**DATE**

12/19/08

NAME (type or print)

Brigette K. Smith

SIGNATURE**TITLE**

Executive Secretary

CODE REVISER USE ONLY**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED****DATE: December 19, 2008****TIME: 1:07 PM****WSR 09-01-120**

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) State Board for Volunteer Firefighters and Reserve Officers

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Brigitte K. Smith	605 11 th Ave SE, Suite #112, Olympia, WA 98501	(360) 753-7318
Implementation.....Brigitte K. Smith	605 11 th Ave SE, Suite #112, Olympia, WA 98501	(360) 753-7318
Enforcement..... State Board for Volunteer Firefighters and Reserve Officers	605 11 th Ave SE, Suite #112, Olympia, WA 98501	(360) 753-7318

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

This rule will not effect small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain: The Board's proposed WAC is not a significant rule of the specified governmental departments nor is it a rule that adopts by incorporation or reference federal or state statutes or rules from other state agencies. It is a rule that relates to only internal governmental operations that are not subject to violation by a nongovernmental party, thus negating the requirement.

Chapter 491-03 WAC

MEMBERSHIP AND PARTICIPATION REQUIREMENTS

NEW SECTION

WAC 491-03-010 Purpose. This chapter sets forth the qualifications necessary to be a participant/member in the volunteer fire fighters' and reserve officers' relief and pension principal fund.

NEW SECTION

WAC 491-03-020 What duties within a municipality qualify me for participation/membership in the board for volunteer fire fighters' and reserve officers' relief and pension principal fund? If you are a member of a municipality as a volunteer fire fighter or reserve officer who does not qualify for PERS or LEOFF (for their volunteer duties only), and if:

(1) Reserve officers:

(a) You are a reserve officer only if you are certified by the Washington state criminal justice training commission under chapter 43.101 RCW, and a commissioned member of a municipality as a:

- (i) Reserve city police officer;
- (ii) Reserve town or deputy marshal;
- (iii) Reserve deputy sheriff.

(b) You are not a reserve officer if you volunteer in either:

- (i) A position that is clerical or secretarial in nature;
- (ii) You are not commissioned;
- (iii) A corrections officer position.

(2) Fire fighter:

(a) You are a fire fighter only if you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling, and extinguishing fires, or your primary duty is to serve as an emergency worker (see subsection (3) of this section).

"Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance,

fire safety inspections, lecturing, performing community fire drills and inspecting homes, businesses, and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling, and extinguishing fires.

(b) You are not a fire fighter if you volunteer in:

- (i) A position that is clerical or secretarial in nature;
- (ii) A position where your primary duty is not preventing, controlling, and extinguishing fires;
- (iii) A position that pays a wage which qualifies you for participation in either PERS or LEOFF;
- (iv) A position that is only supervisory in nature and the primary duty is not preventing, controlling, and extinguishing fires.

(3) **Emergency worker:**

(a) You are an emergency worker only if you have the legal authority and responsibility to perform all aspects of medical assessment, treatment, and care for patients as outlined in state and county protocols for paramedics, emergency medical technicians, and first responders.

"Emergency activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, home safety inspections, lecturing, and driving emergency vehicles. These activities qualify as emergency activities only if the primary duty of your position is to perform all aspects of medical assessment, treatment, and care for patients.

(b) You are not an emergency worker if you volunteer in:

- (i) A position that is clerical or secretarial in nature;
- (ii) A position where your primary duty is not to perform all aspects of medical assessment, treatment, and care for patients;
- (iii) A position that pays a wage that qualifies you for participation in either PERS or LEOFF;
- (iv) A position that is only supervisory in nature and the primary duty is not to perform all aspects of medical assessment, treatment, and care for patients.

NEW SECTION

WAC 491-03-030 What level of activities do I have to participate in to be eligible for participation/membership in the volunteer fire fighters' and reserve officers' pension? All departments are required to develop volunteer participation requirements that meet or exceed the participation requirements as set by the state board. If a department does not develop their own requirements, the board requirements will be in effect.

(1) The board requires that all volunteers:

- (a) Attend a minimum of ten percent, or twenty hours, of all drills and/or training annually, whichever is less.

(b) Respond to a minimum of ten percent of all calls at the member's assigned station or twenty-four calls annually, whichever is less; or ninety-six hours of standby time annually.

For the purposes of this section, standby time means time that the volunteer is assigned to be near at hand and ready to respond to emergency call immediately. A volunteer who merely carries a cellular telephone, pager, or similar device is not considered to be in standby status.

(c) Meet the requirements to be a qualified member under WAC 491-03-010.

(d) Be certified as having met the standards by the local board chair and by the fire chief, police chief, or sheriff annually on the board for volunteer fire fighters and reserve officers provided forms.

(2) An exemption of up to twelve weeks in a twelve-month period may be granted for:

(a) A participant's serious health condition;

(b) A participant to care for a parent, spouse, or minor/dependent child who has a serious health condition;

(c) The birth of and to provide care to an employee's newborn, adopted, or foster child as provided in WAC 357-31-460.

For the purposes of this section, "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities).

(3) An exemption of up to twenty-six weeks in a twelve-month period may be granted for: A participant who is the spouse, son, daughter, parent, or next of kin of a covered service member who is suffering from a serious health condition incurred in the line of duty. The leave described in this subsection shall only be available during a single twelve-month period.

For the purposes of this section, "covered service member" is a member of the armed forces, including the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious health condition.

(4) An exemption of up to one year may be granted for injuries covered under chapter 41.24 RCW; or up to one year for reserve officers injured in the line of duty and covered under Title 51 RCW.

(5) Departments granting exemptions shall submit written documentation on the board for volunteer fire fighters and reserve officers provided forms for board review.

(6) Members joining service after January 1st, or separating from service before December 31st, will have their requirements

prorated for the calendar year.